

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

ANTONIO C. DAVIS,	:	
	:	
Plaintiff	:	
	:	CIVIL ACTION NO. 3:19-1699
v.	:	
	:	(JUDGE MANNION)
KENNEDY, FOOD SERVICE	:	
ADMIN., <i>et al.</i> ,	:	
	:	
Defendants	:	

**ORDER**

**AND NOW**, this **23rd** day of **September 2020**, in accordance with the Memorandum issued concurrently with this Order, it is **ORDERED** that:

1. Plaintiff's motion to proceed *in forma pauperis* is construed as motions to proceed without full prepayment of fees and costs and the motion (Doc. [2](#)) is **GRANTED**.
2. The Complaint (Doc. [1](#)) is deemed filed.
3. Plaintiff must, and has agreed to, pay the full \$350.00 filing fee regardless of the outcome of the litigation. See Doc. [3](#).
4. Pursuant to [28 U.S.C. §1915\(b\)\(1\)](#) and [\(2\)](#), the Superintendent/Warden, or other appropriate official at Plaintiff's place of confinement is directed to deduct an initial partial filing fee of 20% of the greater of:

- (A) the average monthly deposits in the inmate's prison account for the past six (6) months, or
- (B) the average monthly balance in the inmate's prison account for the past six (6) months.

The initial partial filing fee shall be forwarded to the Clerk of the United States District Court for the Middle District of Pennsylvania, P.O. Box 1148, Scranton, Pennsylvania, 18501-1148, to be credited to the above-captioned docket number. In each succeeding month, when the amount in the Plaintiff's inmate prison account exceeds \$10.00, the Superintendent/Warden, or other appropriate official, shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Plaintiff's prison account until the \$350.00 fee is paid. Each payment shall reference the above-captioned docket number.

- 5. The Clerk of Court is directed to send a copy of this Order to the Superintendent/Warden of the institution wherein Plaintiff is presently confined.
- 6. Mr. Davis' Federal Tort Claims Act claims against Mr. Kennedy, J. Shaffer, R. Swisher and J. Heddings are **DISMISSED** with prejudice pursuant to [28 U.S.C. §1915\(e\)\(2\)\(B\)\(ii\)](#).
- 7. Mr. Davis' Bivens claims against Mr. Kennedy, J. Shaffer, R. Swisher and J. Heddings are **DISMISSED** without prejudice pursuant to [28 U.S.C. §1915\(e\)\(2\)\(B\)\(ii\)](#).
- 8. Within thirty (30) days from the date of this Order, Plaintiff may file an amended complaint.

9. The amended complaint shall bear the same case number presently assigned to this action, shall be labelled as the “Amended Complaint,” and shall be direct, concise, and shall standalone without any reference to any document filed in this matter. See [Fed. R. Civ. P. 8\(d\)](#).
10. Should Plaintiff fail to file a timely amended complaint, the Clerk of Court shall be directed to dismiss Mr. Davis’ Complaint (Doc. 1) pursuant to [28 U.S.C. §1915\(e\)\(2\)\(B\)\(ii\)](#) and close the case.
11. The Clerk of Court shall forward to Plaintiff two (2) copies of this Court’s prisoner civil-rights complaint form which Plaintiff shall use in preparing his amended complaint.

*s/ Malachy E. Mannion*  
**MALACHY E. MANNION**  
**United States District Judge**

19-1699-01 order